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RECORDATION NO. _____ Filed & Recorded

FEB 15 1972 -12 50 PM

INTERSTATE COMMERCE COMMISSION

✓ **LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

RAILROAD EQUIPMENT FINANCING

**CONDITIONAL SALE AGREEMENT
AGREEMENT AND ASSIGNMENT**

dated as of January 1, 1972

**EXHIBIT B
TO
FINANCE AGREEMENT**

CONDITIONAL SALE AGREEMENT

THIS AGREEMENT, dated as of January 1, 1972, by and among General Motors Corporation (Electro-Motive Division), a corporation of the State of Delaware (hereinafter sometimes called "EMD") and ACF Industries, Incorporated, a corporation of the State of New Jersey (hereinafter sometimes called "ACF") (EMD and ACF being hereinafter each sometimes called the Vendor or Manufacturer, as more particularly set forth in Section 21 hereof) and Louisville and Nashville Railroad Company, a corporation of the Commonwealth of Kentucky (hereinafter sometimes called the "Vendee"),

WITNESSETH, THAT:

In consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

1. **CONSTRUCTION AND SALE.** Each Manufacturer hereby agrees to construct, sell and deliver to the Vendee, and the Vendee hereby agrees to buy from the Manufacturer and to accept delivery and pay for, as hereinbelow provided, the locomotives and freight train cars described herein below, (such locomotives and cars hereinafter sometimes referred to as "Equipment").

(i) Locomotives to be constructed by EMD: Ten (10) new 2000 H. P. Model GP38AC-2 4-axle diesel-electric road locomotives, to bear Vendee's road numbers 4050 through 4059, and to be constructed in accordance with EMD Specification 8090, as supplemented and as revised and modified from time to time by agreement between EMD and Vendee (such specification, supplements and modifications, if any, hereinafter referred to as "Specifications").

(ii) Cars to be constructed by ACF: Three Hundred Fifty (350) new 100-ton 4600 cu. ft. covered hopper cars, equipped with roller bearings, to bear Vendee's road numbers 240900 through 241249, and to be constructed in accordance with ACF Specification 11-01245, as revised and modified from time to time by agreement between

ACF and Vendee (such specification, and modifications, if any, hereinafter referred to as "Specifications").

Each unit of Equipment will be new standard gauge rolling stock constructed in accordance with the applicable Specifications. Vendee represents and warrants that the Specifications including the design, quality and component parts of the Equipment will conform to all Department of Transportation, Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

(A) DELIVERY. Each Manufacturer agrees to deliver the Equipment to be constructed by it, free of all liens, encumbrances and claims of any nature by or in favor of any person or party and subject only to the reservation of title thereto by such Manufacturer in accordance with the provisions of this Agreement, as follows:

As to EMD, the locomotives shall be delivered to Vendee at such point or points as Vendee may hereafter specify in writing, freight charges to be paid by Vendee; delivery of the locomotives to begin approximately January 18, 1972, and to be completed on or about January 26, 1972.

As to ACF, the cars shall be delivered to Vendee on its tracks at Anchorage, Kentucky, or at such other point or points as Vendee may hereafter specify in writing, in either case freight charges to be paid by Vendee; delivery of the cars to begin approximately February 21, 1972, and to be completed on or about March 16, 1972.

Construction and delivery of the Equipment, however, shall be subject to rescheduling of shop space and delays due to strikes, differences with workmen, labor troubles, acts of God, Governmental acts and regulations, war or war conditions, riots or civil commotion, sabotage, fires, floods, explosions or other accidents, or to delays of carriers or of sub-contractors or in the receipt of materials, or to reasonable delays occasioned by or arising in connection with the construction of equipment or products for a Manufacturer's other customers which are contracted to be constructed at such Manufacturer's plant

prior to the construction of the Equipment covered by this Agreement, or to any other cause or causes (whether or not of the same general character as those herein specifically enumerated) beyond a Manufacturer's reasonable control.

Notwithstanding the preceding provisions of this Section 1, and in accordance with Section 2 (B) hereof, any locomotives or cars not delivered, accepted and settled for on or before July 1, 1972, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement.

Each Manufacturer shall give the Vendee full opportunity to inspect each unit of Equipment during the construction thereof at its plant. Upon completion of each of the units of Equipment, Vendee shall arrange for final inspection thereof and shall have its inspector execute, in six copies, the usual form of certificate of inspection covering all units of Equipment found to be completed in accordance with the Specifications. Each such certificate with respect to the units of Equipment covered thereby shall be final and conclusive evidence that such units of Equipment conform in workmanship, material, construction and in all other respects to the requirements and provisions of this Agreement. Vendee shall arrange also for acceptance of each unit of Equipment by a duly authorized agent upon arrival thereof at the place of delivery and such agent shall execute, in six copies, a certificate of acceptance of such units of Equipment stating that the unit or units of Equipment covered by such certificate have been delivered to and accepted by him on behalf of the Vendee as conforming in all respects to the requirements and provisions of this Agreement. Neither such certificate of inspection nor such certificate of acceptance shall relieve the Manufacturer of its warranties covering material and workmanship contained in Section 7 hereof.

(B) PURCHASE PRICE.

The purchase price of each unit of Equipment shall be determined as hereinafter provided, namely:

As to EMD, the estimated purchase price of each locomotive is Two Hundred Fifty-Four Thousand Dollars (\$254,000.00), f.o.b. EMD's plant at McCook, Illinois.

As to ACF, the estimated purchase price of each car is Seventeen Thousand Five Hundred Dollars (\$17,500.00), f.o.b. ACF's plant at Huntington, West Virginia.

In each case, the estimated purchase price is subject to such increase or decrease as may be agreed to by the Manufacturer and Vendee. The term "Purchase Price" as used herein shall mean the estimated purchase price as so increased or decreased.

For the purpose of making settlement, the Equipment shall be gathered into groups delivered to and accepted by Vendee (each such group being hereinafter called a "Group"). The locomotives and cars shall be delivered in not more than three Groups. The first Group shall consist of 10 locomotives and the second and third Group shall consist of 175 cars each.

2. PAYMENT OF PURCHASE PRICE. (A) The Vendee hereby promises to pay the Purchase Price of each unit of Equipment accepted as hereinabove provided, in the following manner:

That part of the Purchase Price, as stated in the invoice therefor, which is in excess of the Deferred Purchase Price, hereinafter specified, shall be paid in cash to the Manufacturer by the Vendee, upon receipt by Vendee of such invoice.

As to each locomotive to be constructed by EMD, Two Hundred Fifty-Three Thousand Nine Hundred Fifty Dollars (\$253,950) of the Purchase Price, being the Deferred Purchase Price, shall be paid in fifteen (15) equal consecutive annual installments of \$16,930 each.

As to each car to be constructed by ACF, Seventeen Thousand Four Hundred Ninety Dollars (\$17,490) of the Purchase Price, being the Deferred Purchase Price, shall be paid in fifteen (15) equal consecutive annual installments of \$1,166 each.

In the event the Purchase Price of any locomotive or car shall be less than the Deferred Purchase Price therefor (such difference herein called the "Excess"), the Deferred Purchase Price of such locomotive or car shall be reduced by such Excess and thereupon the Purchase Price of such locomotive or car shall be and become the Deferred Purchase Price thereof for every purpose of this Agreement and all installments with respect to such Deferred Purchase Price shall be ratably reduced.

The fifteen equal consecutive annual installments of Deferred Purchase Price in respect of each unit of Equipment shall be due and payable on February 15 of each year, commencing February 15, 1973 and ending February 15, 1987. Said annual installments of the Deferred Purchase Price shall be serially numbered 1 through 15, inclusive.

With each installment payment of principal in respect of each delivered and accepted unit of Equipment, there shall be due and payable (i) interest at the prime rate, as hereinafter defined, per annum on the unpaid Deferred Purchase Price of each unit of Equipment represented by the annual installments of the Deferred Purchase Price serially numbered 1 through 5, from the respective Closing Date, as hereinafter defined, of such unit of Equipment to the respective maturities of said annual installments of principal, *except, however*, that from and after February 15, 1975, interest, on the unpaid Deferred Purchase Price of each unit of Equipment represented by the annual installments of the Deferred Purchase Price serially numbered 4 and 5, shall be due and payable at the prime rate, as hereinafter defined, plus $\frac{1}{4}$ of 1% per annum to the respective maturities of said annual installments of principal and (ii) interest at the fixed rate of 8% per annum on the unpaid Deferred Purchase Price of each unit of Equipment represented by the annual installments of the Deferred Purchase Price serially numbered 6 through 15, from the respective Closing Date of such unit of Equipment to the respective maturities of said annual installments of principal.

For purposes hereof, the "prime rate" is defined as the lowest rate in effect by Union Planters National Bank of Memphis to substantial and responsible borrowers for short-term loans. In the event that, from time to time, the prime rate shall be changed by said Bank, the prime rate shall be deemed to be the changed rate, to become effective on the effective date of such change announced by said Bank.

All interest provided for in this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months. The first payment of interest with respect to each unit of Equipment shall become due and payable on August 15, 1972 and shall cover interest from the "Closing Date" (hereinafter defined) for such unit of Equipment. Subsequent payments of interest shall be due and payable semi-

annually on February 15 and August 15 of each year thereafter until the entire Deferred Purchase Price of such unit of Equipment shall have been paid in full.

The term "Closing Date" with respect to each Group shall mean such date (on or prior to July 1, 1972), not more than 10 business days following presentation by the Manufacturer to the Vendee of the invoice and the certificate of acceptance for such Group, as shall be fixed by the Vendee by written notice delivered to such Manufacturer at least 3 business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

If payment of any installment, or portion thereof, of the Deferred Purchase Price of any unit of Equipment, or of interest, determined as hereinabove provided, be made after its due date, interest thereon shall be paid (to the extent permitted by law) with respect to the annual installments of the Deferred Purchase Price serially numbered 1 through 5, at the rate of seven percent (7%) per annum or at the prime rate plus $\frac{1}{4}$ of 1% per annum, whichever is greater, from said due date until payment be made therefor, and with respect to the annual installments of the Deferred Purchase Price serially numbered 6 through 15 at the rate of ten percent (10%) per annum from said due date until payment be made therefor.

(B) It is mutually agreed that, in the event delivery and acceptance of any of the units of Equipment is delayed beyond July 1, 1972, any such unit of Equipment shall be excluded from the terms and provisions of this Agreement. Any such unit or units of Equipment so excluded from the terms and provisions of this Agreement shall not be included in the term "Equipment" as used in this Agreement. In the event of any such exclusion, the Vendee and the Vendor shall execute an agreement supplemental hereto limiting this Agreement to the Equipment delivered and accepted hereunder.

(C) The Vendee shall not have the privilege of prepaying any installment of the Deferred Purchase Price with respect to any unit of Equipment prior to the date that it becomes due hereunder, except as provided by Section 6 hereof.

(D) All payments provided for in this Agreement shall be made by the Vendee in such coin or currency of the United States of America

as at the time of payment is legal tender for the payment of public and private debts.

(E) Whenever any payment to be made under this Agreement shall be stated to be due on a Saturday, Sunday or a holiday under the laws of the place of payment, such payment shall be made on the next succeeding business day.

3. TITLE TO THE EQUIPMENT. Each Vendor shall and hereby does retain the full legal title to, and property in, all of the units of Equipment constructed by it until the Vendee shall have made all of the payments, and shall have kept and performed all of the covenants in this Agreement provided to be made, kept or performed by the Vendee, with respect to any such units of Equipment, notwithstanding the delivery of such unit or units of Equipment to, and the right to the use thereof by, the Vendee as herein provided.

The Vendee covenants and agrees that it will cause each unit of Equipment to be kept numbered with the assigned road number and to be kept plainly marked by "plating" or stencilling upon both sides of the unit of Equipment with the name of the Vendor, in letters not less than one inch in height, followed by the word "Owner" or "Owners" or other appropriate words designated by the Vendor, and the Vendee agrees that it will not place any unit of Equipment in operation or exercise any control or dominion over any unit of Equipment until it shall have been so marked. Vendee covenants and agrees that it will not change the number assigned to or placed upon any unit of equipment except with the consent of the Vendor and in accordance with a statement of new numbers previously filed with the Vendor by the Vendee, and filed, recorded or deposited in all public offices where this Agreement will have been filed, recorded or deposited; *provided, however*, that, in addition to such identifying number, the Vendee may cause to be placed on each unit of Equipment in such position as not to be confused with the identifying number thereon a reporting number identifying each unit of Equipment for reporting and operating purposes, which reporting number may be changed by the Vendee from time to time without the consent of the Vendor or the filing, recording or depositing of any instrument.

Vendee agrees not to place or permit to be placed upon any unit of Equipment or any replacement thereof any marks, signs or words

which might be interpreted as a claim of ownership of the unit of Equipment by any person, firm or corporation other than the Vendor; except, however, Vendee may cause each unit of Equipment to be lettered "Louisville and Nashville Railroad Company", or "L&N.R.R. Co.", or in some other appropriate manner for convenience of identification of Vendee's right to use such unit of Equipment.

When and only when the Vendors have been paid the full Purchase Price for all of the Equipment, together with interest and any and all other payments as herein provided, and all of the Vendee's covenants and conditions herein contained have been performed by the Vendee, absolute right to possession of, title to and property in, all of the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendors. Upon full payment as aforesaid, Vendors will, if requested by Vendee to do so, execute, acknowledge and deliver to Vendee an instrument whereby the Vendors will acknowledge satisfaction of all payments required to be made by Vendee by any provision of this Agreement, and will transfer and convey to Vendee all right, title and interest in or to the Equipment.

4. **TAXES, etc.** All payments by Vendee hereunder shall be free of expense to Vendors for collection or other charges, and no deductions shall be made therefrom of the amount of any federal, state or other taxes, assessments or governmental charges (other than federal income taxes or net income taxes imposed by or under authority of any state by reason of the residency in such state of a Vendor, any assignee of a Vendor's interest in this Agreement or any participant in any such assignment) levied or imposed directly upon this Agreement or upon any assignment of or participation in any assignment of this Agreement, or which may be levied or imposed upon the Equipment, or the acquisition thereof, or upon the sale, shipment, delivery or use thereof, all of which expenses and taxes the Vendee assumes and agrees to pay in addition to the above mentioned Purchase Price of said Equipment. Vendee hereby specifically agrees also to pay to Vendors in addition to the purchase price of the Equipment, all sales taxes, or like taxes or charges which may be assessed, levied or imposed upon or with respect to the acquisition, sale or delivery to or use by Vendee of the units of Equipment, or any of them, and which Vendors may be legally required to pay to any state or municipality or to the United States or other government.

Vendee shall also pay promptly all taxes, assessments and governmental charges which from time to time may be imposed upon the Equipment, or the earnings arising therefrom, or the operation thereof, or upon Vendors by reason of their ownership thereof, by any government of any country, state or political subdivision thereof in which the Equipment may be located or which shall have jurisdiction over the Equipment or any part thereof, and Vendee agrees at all times to keep the Equipment free and clear of all liens and encumbrances whatsoever (subject to the provisions of Section 17 of this Agreement), other than the lien created by this Agreement and the lien of taxes not yet due or payable; *provided, however*, that Vendee shall not be required to pay any tax, assessment or other governmental charge so long as the Vendee shall contest in good faith and by appropriate legal proceedings the validity of such tax, assessment or other governmental charge and the non-payment thereof does not, in the opinion of Vendors, adversely affect the property or rights of the Vendors hereunder.

5. COMPLIANCE WITH LAWS, RULES AND REGULATIONS. Vendee shall comply in all respects with all laws of the United States of America and of the states in or through which the Equipment may be operated, covering the use, operation or maintenance of the Equipment; with the interchange rules of the Association of American Railroads; and with the lawful rules, with respect to the Equipment, of the Department of Transportation, Interstate Commerce Commission, and of every other legislative, administrative or judicial body exercising any power or jurisdiction over the Equipment; and in the event that said laws or rules require any alterations of any of the units of Equipment, or any additional equipment or appliances thereon, Vendee shall conform therewith at its own expense and shall maintain the Equipment in proper condition for operation under such laws and rules during the life of this Agreement and any supplement thereto; *provided, however*, that Vendee shall have the right to contest in good faith and by appropriate legal proceedings any such laws or rules, so long as such contest does not, in the opinion of Vendors, adversely affect the property or rights of the Vendors hereunder.

6. MAINTENANCE AND CASUALTY OCCURRENCES. The Vendee covenants and agrees that it will at all times after the delivery of the Equip-

ment, maintain and keep said Equipment in good order and repair, at its expense, and shall bear the risk of, and shall not be released from its obligations hereunder in case of, any and all damage, loss or destruction of any units of said Equipment from whatever cause arising.

The Vendee shall promptly replace the units of Equipment, or any of them, or any parts thereof, at its own cost, except as otherwise herein provided, if any unit or units of Equipment shall be lost, destroyed or irreparably damaged from any cause whatever during the continuance of this Agreement (hereinafter sometimes called "Casualty Occurrences"), with other standard gauge rolling stock, other than passenger, special purpose or work equipment, put into service no earlier than January 1, 1972, equal in value to the depreciated value and of substantially as good material or construction as the units of Equipment subject to Casualty Occurrences and shall promptly notify the Vendors of such replacement by the statement of an officer of the Vendee setting forth the description and road numbers of the unit or units of Equipment to be used in replacement, together with (a) an opinion of counsel for the Vendee that the unit or units of Equipment used in replacement are equal in value to the depreciated value of the unit or units of Equipment replaced, that title to the unit or units of Equipment used in such replacement has been transferred to the Vendor free and clear of all liens of every kind, and that a supplemental agreement subjecting said unit or units of Equipment to the provisions of this Agreement has been duly filed, recorded, or filed for record pursuant to the provisions of Section 14 of this Agreement, and (b) an executed counterpart of a bill of sale transferring title to such replacing unit or units of equipment to the Vendor. Any and all such replacement of unit or units of equipment and of any parts shall constitute accessions to the equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and included in the word "Equipment" as used in this Agreement. The Vendee shall cause any such unit or units of Equipment acquired in replacement to be plainly marked by "plating" or stencilling as provided for in Section 3 of this Agreement.

At the election of the Vendee, and in lieu of such replacement as above mentioned, Vendee shall pay to the Vendor on August 15 in each year commencing August 15, 1973, a sum equal to the aggregate unpaid

balance of the Deferred Purchase Price of all such units of Equipment subjected to Casualty Occurrences together with interest accrued on such unpaid balance to the date of payment; *provided, however*, that from time to time in any twelve month period commencing on any August 15 when the aggregate unpaid balance of the Deferred Purchase Price of such units of Equipment subjected to Casualty Occurrences (exclusive of units of Equipment which have been replaced or with respect to which payment shall have been made pursuant to this Section 6) shall exceed \$100,000, Vendee, within 30 days of such event, shall pay to the Vendor a sum equal to the aggregate unpaid balance of the Deferred Purchase Price of such units of Equipment, together with interest accrued on such unpaid balance to the date of payment. Any payment pursuant to this paragraph shall be applied to installments thereafter falling due, in the inverse order of their maturity, but without premium.

Notwithstanding the provisions of the two preceding paragraphs of this Section 6, the Vendors may, if requested by the Vendee so to do, waive the requirements provided herein for replacing such unit or units of Equipment or payment of a sum equal to the then unpaid balance of the Deferred Purchase Price applicable to such unit or units of Equipment. Any such waiver, however, shall apply only to the specific instance for which the same is given.

Should any such worn out, lost, destroyed or irreparably damaged unit or units of Equipment be replaced, or if payment be made therefor, or if waiver of such requirements for either payment or replacement be given, all as in this Section hereinabove provided, the Vendors shall, upon written request by the Vendee, execute an agreement of release, or other suitable instrument, relinquishing any interest which Vendors may hold in or to the said unit or units of equipment so lost, destroyed or irreparably damaged.

The Vendee agrees to furnish to the Vendors upon request, from time to time, as long as this Agreement shall be in force, an accurate inventory of the Equipment in actual service, the condition of the Equipment in actual service, the condition of the Equipment and the numbers and the description of such units of Equipment as may have suffered Casualty Occurrences. The Vendee shall promptly and fully inform the Vendors of any loss, material damage to, or destruction of, any unit of Equipment.

The Vendors shall have the right, but shall be under no obligation, to inspect the Equipment at any reasonable time or times during the continuance of this Agreement.

7. INDEMNITIES AND GUARANTIES. The Vendee hereby covenants and agrees to save, indemnify and keep harmless the Vendors from and against all losses, damages, injuries, claims, and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendors of title to the Equipment, or out of the use or operation of the Equipment during the life of this Agreement, except as herein provided. With respect to such losses, damages, injuries, claims and demands, said covenant of indemnity shall continue in full force and effect for the benefit of the Vendors notwithstanding the full payment of the Purchase Price and the conveyance of the Equipment, as provided in Section 3 hereof, or the termination of this Agreement in any manner whatsoever, or the damage to or the loss or destruction of any unit or units of Equipment.

With respect to the units of Equipment to be constructed by ACF, ACF guarantees that such units will be built in accordance with the requirements, Specifications and standards set forth or referred to in Section 1 hereof and warrants such units of Equipment will be free from defects in material (except as to specialties incorporated herein specified by the Vendee and not manufactured by ACF) or workmanship under normal use and service, ACF's obligation under this paragraph being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit to the Vendee, be returned to such Vendor with transportation charges prepaid and which such Vendor's examination shall disclose to its satisfaction to have been thus defective.

With respect to the units of Equipment to be constructed by EMD, EMD warrants that such units are of the kind and quality described in, or will be built in accordance with the requirements, Specifications and standards set forth or referred to in Section 1 hereof and are suitable for the ordinary purposes for which such Equipment is used, and warrants each such unit of Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. EMD agrees to correct such defects, which examination shall disclose to the

Manufacturer's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of EMD's obligation with respect to such defect under this warranty.

THE WARRANTIES HEREOF ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE VENDORS, EXCEPT FOR ITS OBLIGATIONS UNDER SECTIONS 1, 2, 3 AND 8 HEREOF, AND NEITHER VENDOR ASSUMES OR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT EXCEPT AS AFORESAID.

Each Vendor further agrees with the Vendee that neither the inspection under Section 1 hereof nor the acceptance under Section 2 hereof of any of the units of Equipment by the Vendee shall be deemed a waiver or modification by the Vendee of any of its rights under this Section.

8. PATENT INDEMNITIES. Except in cases of designs specified by the Vendee and not developed or purported to be developed by ACF, and articles and materials specified by the Vendee and not manufactured by ACF, ACF agrees to indemnify, protect and hold harmless the Vendee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees in any manner imposed upon or accruing against the Vendee because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right.

EMD shall defend any suit or proceeding brought against the Vendee so far as the same is based upon a claim that the Equipment of EMD's Specification, or any part thereof, furnished under this Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at EMD's expense) for the defense of same, and EMD shall pay all damages and costs awarded therein against the Vendee. In case any unit of Equipment, or any part thereof, is in such suit held to constitute infringement

and the use of such unit or part is enjoined, EMD shall, at its option and at its own expense, either procure for the Vendee the right to continue using such unit or part, or replace the same with non-infringing equipment or modify it so it becomes non-infringing, or remove such unit and refund the purchase price and the transportation and installation costs thereof. If the purchase price is so refunded, such refund shall be made to the assignee of EMD's rights under this Agreement if this Agreement has been so assigned, which refund shall be applied in like manner as payments in respect of Casualty Occurrences under Section 6 of this Agreement. EMD will not assume liability for patent infringement by reason of purchase, manufacture, sale, or use of devices not included in and covered by its Specifications.

The Vendee likewise will indemnify, protect and hold harmless each such Vendor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against such Vendor because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design specified by the Vendee and not developed or purported to be developed by such Vendor, or article or material specified by the Vendee and not manufactured by such Vendor, which infringes or is claimed to infringe on any patent or other right. Each Vendor agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Vendee every claim, right and cause of action which such Vendor has or hereafter shall have against the originator of any design or against the seller or sellers of any designs or articles or materials purchased or otherwise acquired by such Vendor for use in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and such Vendor further agrees to execute and deliver to the Vendee all and every such further assurance as may be reasonably requested by the Vendee, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. Each Vendor will give notice to the Vendee of any claim known to such Vendor from which liability may be charged against the Vendee hereunder, and the Vendee will give notice to such Vendor of any

claim known to it from which liability may be charged against such Vendor hereunder.

The foregoing states the entire liability of the Vendors for patent infringement by the Equipment or any part thereof.

9. ASSIGNMENT OF INTEREST OF VENDORS. The Vendee agrees that the Vendors may at any time and from time to time transfer, assign, pledge, or sell participations in this Agreement and their respective right hereunder, or any part thereof, and their respective titles and ownership in and to the Equipment or any unit thereof and their respective rights, powers, privileges and remedies hereunder, or any part thereof, on such terms and conditions as they may deem proper, and in any such event all rights, powers, privileges and remedies given to or vested in the Vendors hereunder shall inure to the benefit of, vest in and may be exercised by and for the benefit of the transferee, assignee, pledgee or participant, or for the use and benefit of the proper parties in interest, to the extent specified in such transfer, assignment, pledge or participation; *provided, however*, that no such transfer, assignment, pledge or participation shall subject any such transferee, assignee, pledgee, or participant to, or relieve the Vendors from, any obligation as to the construction, delivery or warranty of the Equipment, or any indemnity or any other duty, obligation or liability of the Vendors, hereunder. Any such transfer, assignment, pledge or participation may be to one or more transferees, assignees, pledges or participants, or jointly to more than one transferee, assignee, pledgee or participant.

In the event of any such assignment, subsequent to the first assignment hereof, the assignor shall give written notice to the Vendee, together with a counterpart or certified copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of the Vendors' right, title and interest in and to the Equipment and each and every part thereof, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement and any supplement hereto shall, to the extent so assigned, be made to the assignee or upon its written order.

In the event of any such assignment prior to the delivery of the

first unit of Equipment, the Vendee will deliver to such assignee, on each Closing Date, an opinion of counsel for the Vendee, dated as of such Closing Date, in form acceptable to such assignee to the effect that the Vendee is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted; that this Agreement is valid, effective and binding upon the Vendee, its successors and assigns, enforceable against it in accordance with its terms; that the execution of this Agreement on behalf of the Vendee is within the corporate powers of the Vendee, and this Agreement has been duly authorized, executed and delivered by the Vendee; that this Agreement and the said assignment thereof have been filed, recorded or filed for record as specified in Section 14 of this Agreement and that no other filing, registering or recording in any other office or agency is required to protect the rights of the Vendors and the Vendors' assignee; that no consent or approval of the Interstate Commerce Commission or of any other governmental or supervisory agency, including any state regulatory agency, is required with respect to the execution and delivery of, or the performance of the terms of, this Agreement or the assignment thereof; and that title to each unit of Equipment in the Group being settled for on such Closing Date, at the time each such unit of Equipment was delivered to the Vendee, was validly vested in such assignee, free of all claims, liens and encumbrances, except only the rights of the Vendee hereunder.

The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the purchase of all or any of the rights of the Vendors under this Agreement and for the purpose of inducing such purchase, that in the event of such purchase and of the assignment by the Vendors of all or any of the rights of the Vendors hereunder, the rights of the assignee to the entire unpaid Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any suit or action or to any defense, set-off, counterclaim or recoupment whatsoever, arising out of any breach of any obligation of EMD or ACF in respect of the units of Equipment to be built by them, respectively, or the manufacture, construction, delivery thereof, or warranty with respect thereto, or in respect of any indemnity herein contained, nor subject to any suit or

action or to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by EMD or ACF, as the case may be. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against EMD or ACF, as the case may be. The provisions of this paragraph may be relied upon by any such assignee as a continuing offer by the Vendee to waive any remedies which it might otherwise have to enforce any and all such obligations of EMD or ACF as against such assignee, which offer may be accepted by such assignee by payment to the assignor of the consideration for the purchase and assignment of this Agreement or of some or all of the rights hereunder and by giving notice of such assignment to the Vendee.

If this Agreement shall have been assigned by the Vendors, and the assignee shall have agreed to pay to the Vendors the Deferred Purchase Price of the Equipment upon delivery to and acceptance of such Equipment by the Vendee in accordance with this Agreement, and the assignee shall fail to pay the Deferred Purchase Price of the Equipment when due, the Vendors will promptly notify the Vendee of such event and if such amount shall not have been previously paid by assignee for any such unit of Equipment, Vendee will not later than 90 days after such due date, pay or cause to be paid to the Vendors the Deferred Purchase Price of each such unit of Equipment.

10. SUCCESSORS TO, AND ASSIGNMENTS BY, THE VENDEE. The Vendee hereby represents, warrants and agrees that its execution of this Agreement and its assumption and undertaking of the obligations, duties, and liabilities hereof, have been expressly authorized and that all the obligations then existing or to accrue of the Vendee under this Agreement, shall be assumed by any person or corporation acquiring title to or possession of the railways and properties of the Vendee, and that upon any such sale, lease, transfer, or assignment of said railways or properties, any person or corporation acquiring title thereto or possession thereof shall also, as a condition of such acquisitions, be bound by all such obligations.

The Vendee hereby covenants and agrees that without the written consent of the Vendors it will not further pledge, hypothecate or in any way encumber, or permit the encumbrance of, any part or all of

the Equipment or assign or transfer this Agreement or any of its rights hereunder, or transfer or lease the Equipment or any units thereof.

The term "Vendee" whenever used in this Agreement means, before any assignment of the rights of the Vendee hereunder as hereinabove provided, the Vendee, its successors and assigns, and after any such assignment shall include the Vendee, its successors and assigns, and any assignee thereof, except only insofar as the Vendors may specifically, in writing, relieve the Vendee or any such assignee from the obligations hereof.

11. DEFAULTS AND REMEDIES.

In case Vendee

(a) shall make default in the payment of any portion of the Purchase Price including any installment of the Deferred Purchase Price, or of any interest, herein provided for and shall remain in default for more than five (5) business days after such payment shall have become due and payable; or

(b) shall make or suffer to be made any unauthorized assignment or transfer of this Agreement or of any interest therein or of its rights or interest in any of the units of Equipment, or any unauthorized lease thereof, or except as herein permitted shall cause or permit any of the units of Equipment to be pledged or held for any debt or obligation owing by Vendee or to be in any manner encumbered, or except as herein authorized shall part with the possession of any of the units of Equipment, and in any such event shall fail or refuse either to cause such assignment, transfer, lease, pledge or encumbrance to be cancelled effectually as to any such assignee, transferee, lessee, pledgee or encumbrancer and all others having any interest therein or to cause any such units of Equipment to be released from such pledge or encumbrance or to recover possession of such units of Equipment within thirty (30) days after Vendors shall have demanded in writing such cancellation or release or the recovery of possession of such units of Equipment; or

(c) shall fail or refuse, for more than thirty (30) days after Vendors shall have demanded in writing the perform-

ance thereof, to comply with any other of the terms and covenants of this Agreement to be kept and performed by Vendee or to make provision satisfactory to Vendors for such compliance; or

(d) shall file, or the creditors of the Vendee shall file any petition for reorganization or debt adjustment affecting the obligations of such Vendee hereunder under Section '77 of the Bankruptcy Act or under any amendment or revision thereof or under any other provision of the Bankruptcy Act as now or hereafter existing or under any other statute, or shall make any voluntary assignment or transfer of such Vendee's interest in and under this Agreement, or any involuntary transfer of such interest shall be made by bankruptcy or by the appointment of a receiver or trustee or by execution or by any judicial or administrative decree or process or otherwise (unless such petition shall be dismissed or such assignment, transfer, decree or process shall within thirty (30) days from the filing or other effective date thereof be nullified, stayed or otherwise rendered ineffective, or unless any such receiver or trustee shall within thirty (30) days from the date of his appointment adopt this Agreement pursuant to due authority of the court appointing him);

then, in any such case (in this Agreement sometimes called "Event of Default"), Vendors at their option may by notice in writing delivered to Vendee, and upon compliance with any mandatory requirement of law applicable to the action to be taken, declare to be due and payable forthwith the entire unpaid balance of the Purchase Price of the Equipment; and thereupon the entire amount of such unpaid Purchase Price shall become and shall be due and payable immediately without further demand together with interest thereon to such date of default at the rates set out in Section 2(A) of this Agreement, and thereafter interest shall be payable by Vendee upon any portion thereof overdue, during such time as it shall remain overdue, at the rate of seven percent (7%) per annum or at the prime rate plus $\frac{1}{4}$ of 1% per annum, whichever is greater, with respect to the annual installments of the Deferred Purchase Price serially numbered 1 through 5, and at the rate of ten percent (10%) per annum with respect to the annual installments of the Deferred Purchase Price serially numbered 6 through 15. Vendors

shall thereupon be entitled to recover judgment for the entire amount so payable by Vendee with interest thereon at said rates and to collect such judgment out of any property of Vendee wherever situated. Any and all money so collected by Vendors shall be applied by them as hereinafter provided.

Vendee covenants that, in case of the happening of any such Event of Default, Vendors or their agents, after making the declaration previously provided for in this Section, and upon such further notice as may be required for compliance with any mandatory requirement of law applicable to the action to be taken, may also take possession of all or any of the units of Equipment wherever they may be found, and for that purpose enter upon the railroads and premises operated by Vendee, and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made hereunder for the Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, mileage or other charges of any kind, earned by the Equipment or any unit thereof, and may lease the Equipment or any unit thereof, or, with or without retaking possession thereof (but only after making the declaration provided for in this Section), may sell the same or any thereof as far as may be necessary to realize the balance remaining to be paid by Vendee under this Agreement, free from any and all claims of Vendee at law or in equity, in one lot and as an entirety or in separate lots, at public or private sale, after at least fifteen (15) days' prior written notice to the Vendee, and with or without any other notice or advertisement, for cash or upon credit, in their discretion, and may otherwise proceed to enforce their rights in the manner provided by this Agreement.

In case Vendors shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the railroads or premises operated by Vendee, for delivery of the Equipment to them, Vendee shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on the lines of railroad of Vendee or on the lines of railroad over which Vendee has or may acquire trackage rights or rights of use and upon lines of connecting railroads as shall be designated by Vendors and shall there deliver the same or cause them to be delivered to Vendors; or, at the option of Vendors, Vendors may keep the Equipment on any of the lines of railroad or prem-

ises of the Vendee until Vendors shall have leased, sold or otherwise disposed of the same, and for such purpose Vendee agrees to furnish without charge for rent or storage the necessary facilities at any point or points thereon selected by Vendors reasonably convenient to Vendee. It is hereby expressly covenanted and agreed that the covenants in this Section contained are of the essence of this Agreement and that upon application to any court having jurisdiction in the premises Vendors shall be entitled to a decree against Vendee requiring the specific performance thereof.

In the event of a sale or other disposition of the Equipment or any unit thereof as herein provided, it shall not be necessary to have the units of Equipment or any of them present at such place or places where such sale or other disposition may be made. At any such sale or sales or other disposition, Vendors to the extent not prohibited by requirements of law, may become purchasers of the units of Equipment or any of them, and in settlement for such purchase price shall be entitled to have credited on account thereof the sums then due to the Vendors from the Vendee under this Agreement.

To the extent permitted by any requirements of law, any such sale or sales may be held or conducted at such place or places and at such time or times as Vendors may specify, and without gathering at the place of sale the units of Equipment to be sold, and in general in such manner as Vendors may determine in compliance with any such requirements of law, but so that Vendee may and shall have reasonable opportunity to bid at such sale.

Upon such taking possession or lease or sale of the Equipment Vendee shall cease to have any rights or remedies in respect of the Equipment under this Agreement, and all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by Vendee, and no payments heretofore made by Vendee for the units of Equipment or any of them shall, in case of the happening of any such Event of Default and such taking possession, lease or sale by Vendors, give to Vendee any legal or equitable interest or title in or to the units of Equipment or any of them or any cause or right of action at law or in equity with respect to the Equipment against Vendors, all subject to and in compliance with any requirements of law. No such taking possession or lease or sale of the Equipment by Vendors shall be a bar

to the recovery by Vendors from Vendee of any unpaid balance of the Purchase Price of the Equipment, and Vendee shall be and remain liable for the same.

If, in case of the happening of any such Event of Default Vendors shall exercise any of the powers conferred upon them by this Agreement, all payments made by Vendee to Vendors under this Agreement after such Event of Default, and the proceeds of any judgment collected by Vendors from Vendee hereunder, and the proceeds of every lease or sale by Vendors hereunder of any of the units of Equipment together with any other sums which may then be held by Vendors under any of the provisions of this Agreement, shall be applied by Vendors in the order of priority following, viz: (a) to the payment of all proper expenses incurred or advances made by Vendors in accordance with the provisions of this Agreement, including the expense of any retaking of the whole or any part of the Equipment and all expenses of the custody and of any lease or sale thereof, and (b) to the payment of all other sums of money due and payable to Vendors under the provisions of this Agreement, including any taxes, assessments or governmental charges paid by or imposed upon Vendors in respect of the Equipment. After all such payments shall have been made in full the title to any of the units of Equipment remaining unsold shall be conveyed by Vendors to Vendee, or otherwise as it may direct, free from any further liabilities or obligations to Vendors hereunder. If, after applying as aforesaid all such sums of money realized by Vendors there shall remain any amount due to Vendors under the provisions of this Agreement, Vendee agrees to pay the amount of such deficit to Vendors. If, after applying as aforesaid all such sums of money realized by Vendors, there shall remain a surplus in the possession of Vendors, such surplus shall be paid to Vendee, or otherwise as it may direct in writing.

The remedies in this Agreement provided in favor of Vendors shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity.

The foregoing provisions, however, are subject to the condition that if, at any time after the unpaid balance of the Purchase Price shall have been declared due and payable as provided in this Agreement, all arrears of installment payments with interest as hereinabove provided and the expenses of Vendors and all other sums which shall

have become due and payable by Vendee under this Agreement (other than the unpaid installments which shall not at the time have matured according to their terms) shall have been paid by or on behalf of Vendee before any lease or sale by Vendors of any of the units of Equipment, and every other default in the observance or performance of any covenant or condition of this Agreement shall have been made good or cured to the satisfaction of Vendors or provisions deemed by Vendors to be adequate shall have been made therefor, then and in every such case Vendors may waive at their option the default by reason of which the unpaid balance of the Purchase Price of the Equipment shall have been declared and become due and payable and may waive at their option the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Neither such retaking possession nor any lease or sale of the Equipment by Vendors nor any action or failure or omission to act on the part of Vendors against Vendee or with respect to the Equipment nor any delay or indulgence granted to Vendee by Vendors shall affect the obligations of Vendee under this Agreement.

12. **APPLICABLE STATE LAWS.** Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived they are hereby waived by the Vendee to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the fullest extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendors' rights hereunder and any and all rights of redemption.

13. **EXTENSION NOT A WAIVER.** Any extension of time granted by the Vendors to the Vendee for the payment of any sum due under this

Agreement, whether that extension be for an intermediate payment or for final payment, shall apply to the particular instance only, and shall not be deemed a waiver of the title of the Vendors reserved hereunder nor any of their rights and remedies hereunder or otherwise existing; and no delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Vendors shall impair or affect the Vendors' right hereafter to exercise the same.

14. RECORDATION. Vendee at its own expense shall cause this Agreement and any supplement hereto, and the first assignment thereof, to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to any equipment purchased pursuant to this Agreement and its rights under this Agreement or for the purpose of carrying out the intentions of this Agreement; and the Vendee shall promptly furnish to the Vendor certificates or other evidence of such filing and recording and an opinion or opinions of counsel for the Vendee with respect thereto satisfactory to the Vendor.

15. PAYMENT OF EXPENSES. Vendee shall pay (a) all costs, charges and expenses (including all fees and expenses of the Agent, stamps and other taxes, if any) incident to the printing or other duplicating, the preparation, execution, acknowledgement, delivery and recordation of this Agreement and of the first assignment hereof by the Vendors and all such costs, charges and expenses in connection with any instrument supplemental hereto or amendatory hereof, and of any certificate of the payment in full of the indebtedness in respect of the Purchase Price of the Equipment due hereunder, and (b) an amount equal to the reasonable fees and disbursements of Messrs. Davis Polk & Wardwell, special counsel to the proposed assignee of this Agreement and to certain parties proposing to acquire interests in such assignment.

16. POSSESSION, USE AND LOCATION. The Vendee, so long as it shall not be in default under this Agreement, shall, subject to the terms of this Agreement, be entitled to the possession and use of the Equip-

ment upon the lines of railroad operated by Vendee, or lines of railroad over which Vendee has or may acquire trackage rights or right of use, and upon connecting and other railroads in the usual interchange of such Equipment.

17. PROHIBITION AGAINST LIENS. The Vendee will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Vendee and/or the Vendors which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Vendors thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendors, adversely affect the property or rights of the Vendors hereunder.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and not delinquent.

18. SECTION HEADINGS. All section, paragraph, or division headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

19. LAWS GOVERNING. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Kentucky; *provided, however*, that the parties hereto shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. This Agreement, and all rights and obligations hereunder, is intended to create and shall be treated as a security interest in the Equipment for all sums owed by the Vendee under this Agreement as the term "security interest" is described under the Uniform Commercial Code heretofore adopted by the Commonwealth of Kentucky.

20. NOTICE. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

(a) to EMD, La Grange, Illinois 60525.

(b) to ACF at 750 Third Avenue, New York, New York 10017.

(c) to Vendee, at 908 W. Broadway, Louisville, Kentucky 40201.

(d) to any assignee of the Vendors, at such address as may have been furnished in writing to Vendors and the Vendee, by such assignee.

21. DEFINITIONS. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, either General Motors Corporation (Electro-Motive Division) or ACF Industries, Incorporated and any successor or successors for the time being to its respective manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor or assignors as regards any rights hereunder that are retained and excluded from any assignment; and the term "Manufacturer", whenever used in this Agreement, means, both before and after any such assignment, either General Motors Corporation (Electro-Motive Division) or ACF Industries, Incorporated and any successor or successors for the time being to its respective manufacturing properties and business.

22. EXECUTION. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

(Corporate seal)

By 
Vice President

ATTEST:


Assistant Secretary

ACF INDUSTRIES, INCORPORATED

(Corporate seal)

By 
Vice President

ATTEST:


Assistant Secretary

LOUISVILLE AND NASHVILLE
RAILROAD COMPANY

(Corporate seal)

By 
Vice President

ATTEST:


Assistant Secretary

STATE OF ILLINOIS }
COUNTY OF COOK } ss:

The undersigned, a Notary Public for the State and County aforesaid, certifies that, on the date hereinafter stated, personally appeared before me in said State and County, **B. B. BROWNELL**, to me personally known, who thereupon produced before me the foregoing instrument, and who, being by me duly sworn, says that he is Vice President of General Motors Corporation (Electro-Motive Division), a corporation, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution and delivery of said instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this *14* day of *February*, 1972.


Notary Public

Cook County, Illinois

My Commission expires October 28, 1975

(NOTARIAL SEAL)

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss:

The undersigned, a Notary Public for the State and County aforesaid, certifies that, on the date hereinafter stated, personally appeared before me in said State and County, _____, to me personally known, who thereupon produced before me the foregoing instrument, and who, being by me duly sworn, says that he is Vice President of ACF Industries, Incorporated, a corporation, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution and delivery of said instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this _____ day of _____, 1972.

Notary Public
State of New York
My Commission expires

(NOTARIAL SEAL)

COMMONWEALTH OF KENTUCKY }
COUNTY OF JEFFERSON } ss:

The undersigned, a Notary Public for the Commonwealth and County aforesaid, certifies that, on the date hereinafter stated, personally appeared before me in said Commonwealth and County, *D.D. Strench*, to me personally known, who thereupon produced before me the foregoing instrument, and who, being by me duly sworn, says that he is Vice President of Louisville and Nashville Railroad Company, a corporation, that the seal affixed to said instrument is the corporate seal of said corporation, that the instrument was signed and sealed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution and delivery of said instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this *14th* day of *February*, 1972.

Norma J. Jones
Notary Public

Jefferson County, Kentucky
My commission expires *March 4, 1973.*

(NOTARIAL SEAL)

**EXHIBIT C
TO
FINANCE AGREEMENT**

AGREEMENT AND ASSIGNMENT

AGREEMENT AND ASSIGNMENT, dated as of January 1, 1972, by and among General Motors Corporation (Electro-Motive Division), a corporation of the State of Delaware (hereinafter sometimes called "EMD") and ACF Industries, Incorporated, a corporation of the State of New Jersey (hereinafter sometimes called "ACF"), (EMD and ACF being hereinafter collectively sometimes called the "Sellers", or severally the "Seller"), and Mercantile Safe Deposit and Trust Company, of Baltimore, Maryland, acting as Agent under a Finance Agreement dated as of January 1, 1972 (said Company being hereinafter called the "Agent"),

WITNESSETH:

Whereas, the Sellers and Louisville and Nashville Railroad Company, a corporation of the Commonwealth of Kentucky (hereinafter called the "Buyer"), entered into a Conditional Sale Agreement, dated as of January 1, 1972 (hereinafter called the "Conditional Sale Agreement"), with respect to 10 new 2000 H.P. Model GP38AC-2 4-axle diesel-electric road locomotives and 350 new 100-ton 4600 cu. ft. covered hopper cars being hereinafter collectively called the "Equipment", all as more particularly described therein, a counterpart of the Conditional Sale Agreement being prefixed hereto.

Now, Therefore, This Agreement and Assignment witnesseth that in consideration of the mutual promises, covenants and agreements hereinafter set forth,

(1) Each Seller hereby sells, assigns, transfers and sets over to the Agent, its successors and assigns, all the right, title and interest of such Seller under the Conditional Sale Agreement (except the right to manufacture and the right to receive all payments in respect of each unit of Equipment in excess of the Deferred Purchase Price specified in Section 2 of the Conditional Sale Agreement and in reimbursement for taxes paid or incurred as provided in Section 4 thereof and the right to receive the payments specified in the last paragraph of Section 9 thereof) together with all the powers, privileges, immunities

and remedies of each Seller thereunder, and all the right, title and interest of such Seller in and to each of the units of Equipment when and as the same are severally manufactured and delivered and accepted by the Buyer, and, upon payment therefor by the Agent to each Seller of the amounts required to be paid under Section (7) hereof, in and to any and all amounts which may be or become due and owing by the Buyer to such Seller under the Conditional Sale Agreement on account of the Deferred Purchase Price of each unit of Equipment and interest thereon, and in and to any other sums becoming due under the Conditional Sale Agreement, without any recourse, however, to the Sellers, or either of them, for or on account of any failure of payment or compliance with any of the terms or provisions of said Conditional Sale Agreement on the part of the Buyer. In furtherance of the foregoing assignment and transfer, each Seller hereby authorizes and empowers the Agent, in such manner and at such times as the Agent may deem advisable, in the name of such Seller or in the name of the Agent, or in the name of the nominee of the Agent, to ask, demand, sue for, collect, receive and enforce, any and all sums to which the Agent may become entitled under this Agreement and Assignment and compliance by the Buyer with the terms and agreements on the part of the Buyer to be performed under the Conditional Sale Agreement, but without expense and liability to the Sellers, or either of them, and for the sole benefit of the Agent.

(2) Each Seller warrants that as set forth in and subject to the provisions of the Conditional Sale Agreement it has legal title to the units of Equipment to be built by it, free and clear of all liens and encumbrances and subject to no rights or claims of any persons whatsoever except those of the Buyer under the Conditional Sale Agreement, and good right to sell the same.

Each Seller covenants and agrees that, at the time of delivery of each of the units of Equipment to the Buyer, each side of each such unit shall be plainly, distinctly and conspicuously "plated" or marked by stencilling in letters not less than one inch in height with the following words:

"Mercantile-Safe Deposit and Trust Company, of Baltimore, Maryland,
Agent — Owner".

(3) Each Seller agrees that this Agreement and Assignment will

not transfer or impose upon the Agent, or in any way affect or modify (a) each Seller's obligation to construct the units of Equipment in accordance with the applicable Specifications, and as warranted therein or in said Conditional Sale Agreement set forth, or (b) each Seller's obligations to indemnify the Buyer against and save and keep the Buyer harmless from loss and expense resulting from patent claims, all as set forth in Section 8 of the Conditional Sale Agreement, the said obligations to be and remain enforceable against and only against the Sellers, respectively, as provided in the Conditional Sale Agreement.

(4) Each Seller will indemnify the Agent against and save and keep it harmless from all expense, loss or damage incurred or sustained by the Agent by reason of any defense, set-off or counterclaim of the Buyer, based on any indebtedness or liability at any time owing to the Buyer by said Seller in any suit or action brought by the Agent under the Conditional Sale Agreement. Each Seller agrees to save, indemnify and keep harmless the Agent from and against any and all royalties, damages, claims, suits, judgments and costs that may arise in the use of any patented article on the Equipment at the time of delivery, except with regard to any appliances, devices or materials specified or required by the Buyer and not manufactured by such Seller.

(5) Each Seller covenants and agrees that it will construct the units of Equipment to be built by it in full and complete accordance with the Conditional Sale Agreement and that it will deliver the same on completion thereof to the Buyer free of all claims, liens and encumbrances and in accordance with the provisions of the Conditional Sale Agreement; and that notwithstanding this Agreement and Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement, set forth to be performed and complied with by such Seller.

(6) Each Seller covenants and agrees with the Agent that, upon the request of the Agent, such Seller will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of such Seller therein or in the Equipment therein described.

(7) The Agent covenants and agrees that upon each Closing Date (as defined in the Conditional Sale Agreement) it will make payment

to such Seller of the Deferred Purchase Price of each unit of Equipment in the Group being settled for, determined as provided in Section 2 of the Conditional Sale Agreement, provided it shall have received the following documents in such number of counterparts or copies as may be reasonably requested:

(a) A bill of sale from the Seller to the Agent, transferring to the Agent title to the units of Equipment so delivered, and warranting to the Agent and to the Buyer that at the time of delivery to the Buyer the Seller had legal title to such Equipment and good and lawful right to sell such Equipment and that title to such Equipment was then free of all claims, liens and encumbrances of any nature except only the rights of the Buyer under the Conditional Sale Agreement;

(b) A certificate of acceptance signed by an authorized representative of the Buyer stating that the Equipment covered by such certificate have been delivered to and accepted by him on behalf of the Buyer as conforming in all respects to the requirements and the provisions of the Conditional Sale Agreement;

(c) A duplicate of the Seller's invoice covering such units of Equipment so accepted, stating the Purchase Price (as then determined) and the Deferred Purchase Price of each of said units of Equipment and acknowledging receipt of payment of the excess of the Purchase Price over the Deferred Purchase Price;

(d) A certificate executed by the Buyer, dated as of the date of acceptance by the Buyer of such units of Equipment, stating that the amounts of the Deferred Purchase Price and the Purchase Price (as then determined) of each of said units of Equipment are the amounts shown on the invoice hereinabove in subparagraph (c) referred to, and that the excess of said Purchase Price over the Deferred Purchase Price has been paid;

(e) An Opinion of Counsel for the Buyer in form acceptable to the Agent and its counsel as specified in Section 9 of the Conditional Sale Agreement;

(f) An Opinion of Counsel for such Seller, dated as of such Closing Date, stating that (i) the Agent is vested with all the rights, titles, interests, powers, privileges and remedies purported

to be assigned to it by this Agreement and Assignment; (ii) title to the units of Equipment in the Group being settled for on such Closing Date is validly vested in the Agent and such items of Equipment, at the time of delivery thereof to the Buyer under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only the rights of the Buyer under the Conditional Sale Agreement; (iii) such Seller is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted; and (iv) the Conditional Sale Agreement and this Agreement and Assignment have been duly authorized, executed and delivered by such Seller and assuming valid authorization, execution and delivery by the other parties hereto and thereto, are valid instruments binding upon such Seller and enforceable against such Seller in accordance with their terms; and

(g) An Opinion, dated as of such Closing Date, of Messrs. Davis Polk & Wardwell, who are acting as special counsel for the Agent and for certain Investors named in the Finance Agreement, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms; (ii) this Agreement and Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a valid and binding instrument and enforceable in accordance with its terms; (iii) the Agent is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Agreement and Assignment; (iv) title to the Equipment, when each unit thereof was delivered and accepted by the Buyer, was validly vested in the Agent free of all claims, liens and encumbrances except only the rights of the Buyer under the Conditional Sale Agreement; (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Agreement and Assignment or, if any approval is necessary it has been obtained; and (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and

no other filing or recordation is necessary for the protection of the rights of the Agent in any state of the United States of America or the District of Columbia. In giving such opinions counsel may rely, as to any matters governed by the laws of any jurisdiction other than New York or the United States of America, upon the opinions given pursuant to subparagraphs (e) and (f) above.

In giving the opinions specified in subsection (e), (f) and (g) above, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms, by a general reference as to limitations as to the enforceability imposed by laws with respect to or affecting remedies and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally.

The obligation of the Agent to make payment for any Group of the Equipment is hereby expressly conditioned upon the prior receipt by the Agent, as provided in the Finance Agreement, of all the funds to be furnished to the Agent by the various parties to the Finance Agreement with respect thereto.

The Agent shall not be obligated to make any of the above-mentioned payments at any time while an Event of Default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an Event of Default under the Conditional Sale Agreement, shall have occurred and be continuing.

It is understood and agreed that the Agent shall not be required to make any payment in respect of any unit of Equipment excluded from the Conditional Sale Agreement pursuant to subsection (B) of Section 2 thereof. The Agent shall at the request of the Sellers or the Buyer execute or join in the execution of such supplemental agreement as may be deemed necessary or appropriate to exclude any such units of Equipment from the Conditional Sale Agreement and from this Agreement and Assignment.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

(8) It is mutually agreed that the Agent and any assignee of the Agent may assign, and/or sell interests in, its rights hereunder and

under the Conditional Sale Agreement, as a whole or in part or in respect of all or any one or more of the units of Equipment covered thereby, including the right to receive any payments due or to become due to it from the Buyer under the Conditional Sale Agreement in respect of such Equipment. In the event of any such assignment or sale, any such subsequent or successive assignee or assignees or purchasers shall, to the extent of such assignment or sale, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

(9) Each Seller hereby:

(a) represents and warrants to the Agent, its successors and assigns that the Conditional Sale Agreement was lawfully executed by it for a valid consideration, and that assuming valid authorization, execution and delivery by the other parties thereto, the Conditional Sale Agreement is a valid, existing Agreement binding upon such parties in accordance with its terms, and that there has been no amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Agent or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises, to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to Agent or intended so to be.

(10) This Agreement and Assignment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument. Agent agrees to deliver one of such counterparts, or a certified copy thereof, to the Buyer. Although this Assignment is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

(11) No delay in exercising, or failure to exercise or partial exercise of any of the rights of the Agent under this Agreement and Assign-

ment shall operate as a waiver thereof. In no event shall any notice to or demand on the Sellers, or either of them, be deemed a waiver of any obligation of the Sellers to comply without notice or demand with all the terms, conditions and agreements herein contained, or a waiver of any right of the Agent to take further action as herein provided without notice or demand, nor in any event shall any waiver or consent on the part of the Agent be effective unless in writing, and then only with respect to the specific instance for which the same is given.

(12) Each reference herein to the Agent shall in every instance, except where the context otherwise requires, be deemed to include its successors and assigns, in whose favor the provisions hereof shall likewise inure; and all provisions hereof shall be binding upon the Sellers and their successors and assigns.

(13) The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Kentucky; *provided, however*, that the parties hereto shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. This Agreement and Assignment, and all rights and obligations hereunder, is intended to create and to perpetuate and assign, and shall be treated as, a security interest in said Equipment for the indebtedness of the Buyer under the Conditional Sale Agreement and under this Agreement and Assignment as the term "security interest" is described under the Uniform Commercial Code heretofore adopted by the Commonwealth of Kentucky.

IN WITNESS WHEREOF, each Seller and the Agent have caused this instrument to be executed in their respective names by their respective officers thereunto duly authorized, and have caused their respective corporate seals to be affixed, duly attested, as of the day and year first above written.

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

By *B. B. D. [Signature]*
Vice President

(CORPORATE SEAL)

ATTEST:

W. G. [Signature]
Assistant Secretary

ACF INDUSTRIES, INCORPORATED

By *W. W. Wilson*
Vice President

(CORPORATE SEAL)

ATTEST:

[Signature]
Assistant Secretary

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY

By *R. J. [Signature]*
Assistant Vice President

(CORPORATE SEAL)


ATTEST:

[Signature]
Assistant Corporate Trust Officer

STATE OF ILLINOIS }
COUNTY OF COOK } ss:

The undersigned, a Notary Public for the State and County afore-said, certifies that, on the date hereinafter stated, personally appeared before me in said State and County, **B. B. BROWNELL**, to me personally known, who thereupon produced before me the foregoing instrument, and who, being by me duly sworn, says that he is Vice President of General Motors Corporation (Electro-Motive Division), a corporation, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution and delivery of said instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this *14* day of *February*, 1972.


Notary Public
Cook County, Illinois

My Commission expires October 28, 1975

(NOTARIAL SEAL)

STATE OF NEW YORK }

COUNTY OF NEW YORK }

ss:

The undersigned, a Notary Public for the State and County afore-said, certifies that, on the date hereinafter stated, personally appeared before me in said State and County, **W. W. WILSON** to me personally known, who thereupon produced before me the foregoing instrument, and who, being by me duly sworn, says that he is Vice President of ACF Industries, Incorporated, a corporation, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution and delivery of said instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this *14th* day of *February* 1972.



Notary Public
State of New York
My Commission expires

(NOTARIAL SEAL)

EDWIN F. MEYER
NOTARY PUBLIC, State of New York
No. 30-7917803
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1972

STATE OF MARYLAND

CITY OF BALTIMORE

SS:

The undersigned, a Notary Public for the State and City aforesaid, certifies that, on the date hereinafter stated, personally appeared before me in said State and City, ~~F. W. Deolittle~~, to me personally known, who thereupon produced before me the foregoing instrument, and who, being by me duly sworn, says that he is ^{Asst} Vice President of Mercantile Safe-Deposit and Trust Company, a corporation, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution and delivery of said instrument was the free act and deed of said corporation.

R. F. Ziernsk.

Witness my hand and notarial seal, this 4th day of February 1972.

Charles W. McKelvey Jr.

Notary Public

City of Baltimore, Maryland

My Commission expires 7-1-74

(NOTARIAL SEAL)

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ACKNOWLEDGEMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of, the Assignment made by the foregoing Agreement and Assignment is hereby acknowledged as of *February 14, 1972.*

LOUISVILLE AND NASHVILLE RAILROAD
COMPANY

By 
Vice President